

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER DESEAN VAUGHN,

Defendant-Appellant.

UNPUBLISHED

October 12, 2006

No. 260488

Wayne Circuit Court

LC No. 04-007175-01

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL JERELL KING,

Defendant-Appellant.

No. 260637

Wayne Circuit Court

LC No. 04-007684-01

Before: Fitzgerald, P.J., and Markey and Talbot, JJ.

PER CURIAM.

In Docket No. 260488, defendant Christopher Vaughn appeals as of right his conviction, following a jury trial, for three counts of second-degree murder, MCL 750.317, two counts of assault with intent to commit great bodily harm, MCL 750.84, one count of being a felon in possession of a firearm, MCL 750.224f, and one count of possession of a firearm during the commission of a felony, MCL 750.227b. In Docket No. 260637, defendant Michael King appeals as of right his conviction, following a jury trial, for three counts of second-degree murder, MCL 750.317, two counts of assault with intent to commit great bodily harm, MCL 750.84, and one count of possession of a firearm during the commission of a felony, MCL 750.227b. We affirm.

On June 29, 2004, Anthony Smith, Tyrone Smith, and Jermaine Henry were shot and killed, and Frisco Williams and Shirley Smith were shot and wounded following an altercation that began after someone allegedly made threats against Vaughn's sister. Several witnesses identified Vaughn as firing a handgun during the encounter. Testimony established that King

supplied one or more weapons used in the shootings and that he drove Vaughn and others away from the scene following the shootings.

Vaughn first asserts on appeal that the trial court erred in concluding that his statement to police was voluntarily given. We review a trial court's determination regarding the voluntariness of a confession de novo, and in so doing we will not disturb the trial court's factual findings unless they are clearly erroneous. *People v Kowalski*, 230 Mich App 464, 471-472; 584 NW2d 613 (1998). A finding is clearly erroneous if it leaves this Court with a definite and firm conviction that a mistake was made. *People v Lyons (On Remand)*, 203 Mich App 465, 468; 513 NW2d 170 (1994). When reviewing the trial court's findings of fact, this Court gives deference to the trial court's superior position to observe the credibility of the witnesses. *People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000).

Before trial, Vaughn moved to suppress a statement he made to officer Barbara Simon in which he admitted to possessing and firing a weapon during the events in question. He claimed that he made the statement only as a result of threats and promises made by Simon. At the evidentiary hearing on Vaughn's motion the trial court was presented with conflicting testimony from Simon and Vaughn regarding whether Simon made any threats or promises to induce Vaughn to make his statement. Vaughn testified that Simon threatened that his sister would be charged and that she would spend the rest of her life in prison. Vaughn also testified that Simon promised him immunity from prosecution if he admitted to firing a weapon into the air and agreed to testify for the prosecution. Simon testified that Vaughn made his statement voluntarily and that she made no threats or promises to induce him to do so. The trial court determined that Simon's testimony was more credible than Vaughn's testimony and that of his brother regarding Simon's interviewing tactics. Given the trial court's opportunity to observe the witnesses, and based on the record presented, we are not left with a firm and definite conviction that the trial court was mistaken in its findings of fact. *Sexton, supra* at 752; *Kowalski, supra* at 472. Therefore, we agree that Vaughn's statement was voluntary, *id.*, and we affirm the trial court's ruling, denying his motion to suppress.

King argues that there was insufficient evidence presented at trial to support the verdicts against him. When determining whether there was sufficient evidence presented to support the verdict, we review the evidence de novo, in the light most favorable to the prosecutor, to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Fennell*, 260 Mich App 261, 270; 677 NW2d 66 (2004); *People v Legg*, 197 Mich App 131, 132; 494 NW2d 797 (1992). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Fletcher*, 260 Mich App 531, 562; 679 NW2d 127 (2004). Further, a trier of fact is permitted to make reasonable inferences from the evidence presented. *Legg, supra* at 132. And, it is for the trier of fact, rather than this Court, to determine what inferences can be fairly drawn from the evidence and to determine the weight to be accorded to those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). Circumstantial evidence and the reasonable inferences that arise from the evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999); *Fennell, supra* at 270.

"The general rule is that, to convict a defendant of aiding and abetting a crime, a prosecutor must establish that '(1) the crime charged was committed by the defendant or some other person; (2) the defendant performed acts or gave encouragement that assisted the

commission of the crime; and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time that [the defendant] gave aid and encouragement.” *People v Moore*, 470 Mich 56, 67-68; 679 NW2d 41 (2004), citing *Carines, supra* at 768. “In determining whether a defendant assisted in the commission of the crime, the amount of advice, aid or encouragement is not material if it had the effect of inducing the commission of the crime.” *Moore, supra* at 71, citing *People v Smock*, 399 Mich 282, 285; 249 NW2d 59 (1976). As noted in *Carines, supra* at 757-758, quoting *People v Turner*, 213 Mich App 558, 568-569; 540 NW2d 728 (1995):

“Aiding and abetting” describes all forms of assistance rendered to the perpetrator of a crime and comprehends all words or deed that might support, encourage, or incite the commission of a crime. . . . An aider and abettor’s state of mind may be inferred from all the facts and circumstances. Factors that may be considered include a close association between the defendant and the principal, the defendant’s participation in the planning or execution of the crime, and evidence of flight after the crime.

King does not assert that there was insufficient evidence presented to establish that a crime was committed. He also does not deny that he provided a weapon that was used in the shootings or that he drove Vaughn, Vaughn’s brother, and another individual from the scene following the shooting. King asserts, however, that the prosecutor presented insufficient evidence to establish that he possessed the requisite intent to aid and abet Vaughn’s crimes. We disagree.

Viewing the evidence in a light most favorable to the prosecution, the testimony presented at trial established that Vaughn, his brother, and another individual named “Surge,” went to confront individuals who they believed threatened Vaughn’s sister. As they were driving, Surge telephoned King and indicated that he was not going into the confrontation without a gun. King responded by driving to the location where Surge was waiting and where he provided at least one weapon. The evidence also established that King was at the scene during the events preceding the shooting, and immediately following the shooting he arrived in his vehicle to shepherd Surge, Vaughn, and Kimani away from the scene. Whether a defendant possessed the necessary intent to be convicted of aiding and abetting may be inferred from circumstantial evidence. *People v Wilson*, 196 Mich App 604, 614; 493 NW2d 471 (1992). From the evidence presented, the jury could reasonably infer that, at the time he supplied one or more weapons used in the shooting, King was aware that Vaughn, Surge, and the others intended to confront, and assault, the individual or group that threatened Vaughn’s sister. Our Supreme Court recently explained in *People v Robinson*, 475 Mich 1, 15; 715 NW2d 44 (2006):

[A] defendant must possess the criminal intent to aid, abet, procure or counsel the commission of an offense. A defendant is criminally liable for the offenses that the defendant specifically intends to aid or abet, or has knowledge of, as well as those crimes that are the natural and probable consequences of the offense he intends to aid or abet. Therefore, the prosecutor must prove beyond a reasonable doubt that the defendant aided or abetted the commission of an offense and that the defendant intended to aid the charged offense, knew the principal intended to commit the charged offense or alternatively, that the charged offense

was a natural and probable consequence of the commission of the intended offense.

Thus, “a defendant is liable for the crime the defendant intends to aid or abet as well as the natural and probable consequences of that crime.” *Id.* at 15. Here, the charged offenses (murder and assault with intent to do great bodily harm) were a natural and probable consequence of engaging in a confrontation and assault while armed with a handgun. We conclude, therefore, that there was sufficient evidence presented at trial to support the verdicts against King. *Robinson, supra* at 15.

Next, both defendants assert on appeal that the trial court erred in declining to instruct the jury on voluntary and involuntary manslaughter, and each argues that there was error regarding the trial court’s aiding and abetting instruction.

At trial, Vaughn requested that the jury be instructed on manslaughter. The trial court declined to give such an instruction, concluding that it was not applicable in this case. This Court reviews a claim that the trial court erred in declining to instruct the jury as to manslaughter de novo. *People v Nickens*, 470 Mich 622, 626; 685 NW2d 657 (2004); *People v Brown*, 267 Mich App 141, 145; 703 NW2d 230 (2005); *People v Hubbard (After Remand)*, 217 Mich App 459, 487; 552 NW2d 493 (1996). King neither requested a manslaughter instruction, nor objected to the instructions as given. Therefore, as to King, this Court’s review on this issue is limited to a determination whether there was plain error affecting King’s substantial rights. *People v Gonzalez*, 468 Mich 636, 642; 664 NW2d 159 (2003); *Carines, supra* at 764-765.

Jury instructions on necessarily included lesser offenses are permitted only where the charged greater offense requires a jury to find a disputed factual element that is not part of the lesser-included offense and a rational view of the evidence would support such a finding. *People v Cornell*, 466 Mich 335, 357, 359; 646 NW2d 127 (2002). Both voluntary manslaughter and involuntary manslaughter are necessarily included lesser offenses of murder, distinguished by the element of malice. *People v Mendoza*, 468 Mich 527, 533-534, 540-541; 664 NW2d 685 (2003). “Consequently, when a defendant is charged with murder, an instruction for voluntary and involuntary manslaughter must be given” if, but only if, a rational view of the evidence supports a conviction for the lesser offense. *Id.* at 541, 545; *Cornell, supra* at 357, 359.

Vaughn testified at trial that he neither possessed nor fired any weapon on the date in question and that someone else was responsible for shooting the victims. In *Mendoza, supra*, 547-548, our Supreme Court concluded that it was not error to decline to instruct the jury on involuntary manslaughter where the defendant’s theory was not that he acted without the requisite malice, but rather that someone else was responsible for the victim’s death. The Court explained that in such circumstances the element differentiating manslaughter from murder, that of malice, was not disputed. Here, too, given Vaughn’s testimony, the element of malice was not in dispute. Therefore, neither defendant was entitled to either manslaughter instruction. On the record before us, we conclude that the trial court did not abuse its discretion in determining that the manslaughter instructions were not applicable to Vaughn. *Id.*; *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006).

In reaching our conclusion, we note that King’s argument on appeal is premised on the allegation that, given that the shootings followed a fight involving numerous participants, the

jury could have concluded that Vaughn, upon whom King's criminal liability is premised, acted out of passion rather than reasoned thought. However, given Vaughn's testimony, no rational view of the evidence would have permitted the jury to conclude that Vaughn acted out of passion. Vaughn claimed not to have been the shooter at all. Thus, an instruction on voluntary manslaughter was not permissible for King. Thus, King cannot establish plain error arising from the trial court's decision not to instruct the jury on that offense. *Gonzalez, supra* at 642-643; *Carines, supra* at 764-765.

Vaughn also argues that the trial court erred in declining to limit the aiding and abetting instruction to King. However, our review of the record reveals that, although the trial court ruled that the aiding and abetting instruction would apply to both defendants, the court only instructed the jury on aiding and abetting as to King. Thus, there is no factual basis for Vaughn's assertion that the trial court erred in failing to instruct the jury that the aiding and abetting instruction applied only to King.

King also argues on appeal that the trial court erred when it failed to instruct the jury that, to convict him as an aider and abettor to a specific intent crime, it must find that he possessed the same specific intent as the principals to the crime possessed. The trial court provided the standard aiding and abetting instruction, CJI2d 8.1, to the jury. This Court has determined that the standard instruction is a "clear and proper" statement of the law. *People v Champion*, 97 Mich App 25, 32; 293 NW2d 715 (1980), rev'd on other grounds 411 Mich 468 (1981). King did not request an alternative or additional instruction, and he did not object to the instruction as given. Therefore, this Court's review is limited to a determination whether the trial court's giving of the standard instruction constitutes plain error affecting his substantial rights. *Carines, supra* at 764-765. Michigan courts repeatedly have held that an aider and abettor is not required to possess the specific intent required of the principal. *Robinson, supra* at 15; *Carines, supra* at 757-760; *People v King*, 210 Mich App 425, 430-431; 534 NW2d 534 (1995). Thus, we find that King cannot establish plain error affecting his substantial rights arising from the trial court's failure to give the instruction that King now claims was appropriate.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Jane E. Markey

/s/ Michael J. Talbot